

AMENDMENT UNDER 37 C.F.R. § 1.111 & 1.121  
U.S. Appln. No.: 10/510,110

Attorney Docket No.: Q84011

**AMENDMENTS TO THE DRAWINGS**

Figures 1-3 will be replaced with amended Figures 1-3 which include English legends.

Attachment: None. Will be forthcoming.

**REMARKS**

Claims 1-6 are all the claims pending in the application.

**I. Drawings**

The drawings are objected to under 37 CFR 1.83(a) as failing to show English legends.

The Applicant will submit a replacement set of drawings in due course to include an English legend and overcome the objection by the Examiner.

**II. Specification**

The specification is objected to because it lacks proper section headers. The Applicant herein amends the specification to include appropriate section headers.

**III. Priority Claim**

The Applicant herein amends the specification to specifically state the claim of priority to a previously filed application under 35 USC 365(c).

**IV. Claim Rejections: 35 USC §112**

Claims 1-6 are rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the enablement requirement. The Examiner specifically cites the elements in claims 1 and 5 of:

means (2) for instantiating said logical rules, said instantiation being effected as a function of said service and independently of the technology of said network,

means (2) for determining measurement points independently of the technology of said network.

The Examiner claims that the disclosure does not teach how the measurement points are derived out of the logical rules and how the SLS parameters effect the determination of these measurement points. The Applicant respectfully disagrees, and submits that the paragraph on page 4, lines 22-25, sufficiently disclose one embodiment of the means (2) such that one skilled in the art would be able to make and/or use the invention.

The Applicant will file in due course a statement by the inventor under 37 CFR 1.132 as further support of the adequacy of the disclosure to enable the elements of claims 1 and 5. The declaration sets forth, from the perspective of one of ordinary skill in the art, the reasons why the invention disclosure adequately enables another of ordinary skill in the art to make and/or use the same.

Therefore, the Applicant respectfully requests that the rejection of claims 1-6 under 35 USC §112 be withdrawn.

#### **V. Claim Rejections: 35 USC §103**

Claims 1 – 6 are rejected under 35 USC §103(a) as being unpatentable over Ellesson et al. (US Pat. No. 6,459,682), in view of Official Notice. The Applicant respectfully submits that claims 1-6 would not have been rendered obvious.

As to claims 1 and 3, Ellesson fails to teach a system for *managing the measurement of* the quality of service (QoS) on a network, and instead refers only to techniques for measuring the QoS on a network through measuring network traffic, and thus does not teach the elements of the claimed invention. The Examiner states that Ellesson teaches a system for implementing a

service level agreement (SLA) “from which rules/policies associated with a quality of service are derived;” however, Ellesson does not disclose deriving rules associated with an SLA or QoS at any point in the specification. Ellesson instead discloses only that an SLA specifies service levels and that a “policing functionality checks for violation” of these service levels. Col. 5, lines 48-54. Ellesson then discloses a system for measuring the traffic rates using “various counters,” but does not discuss the *management* of this system, such as determination of where the counters should be placed, as does the claimed invention. The Examiner also states that Ellesson discloses “QoS performance monitoring...conducted by measuring traffic information at the egress and ingress devices,” but the monitoring done in Ellesson is only monitoring of the performance of the *network*, not the measurement of the performance of the *QoS device* monitoring the performance of the network. Ellesson specifically states that performance monitoring “...includes estimating the bandwidth, delay and loss characteristics of selected flows.” Col. 6, lines 3-4. This performance monitoring is directed only to the performance of the network itself, and has nothing to do with managing the performance monitors or QoS devices, as recited in claims 1 and 3 of the invention.

The Examiner acknowledges that Ellesson lacks the teaching that the determination of measurement points are based on a set of logical rules collected from experts or operators, but takes Official Notice “that the idea of establishing rules from experts or operators is well known in the art, in particular in the area of designing an expert system...” The Applicant respectfully challenges the Examiner’s assertion that establishing rules from experts to design an expert system is well known in the art, and requests that the Examiner provide further documentary

evidence to support this statement. Further, as Ellesson does not disclose the elements of claims 1 and 3, the Applicant does not believe that the Official Notice taken by the Examiner serves as a *prima facie* case of obviousness under 35 USC §103(a).

For at least the reasons stated above, the Applicant submits that Ellesson, whether taken alone or in combination with other references, fails to disclose the elements of the claimed invention sufficient to establish obviousness under 35 USC §103(a). The Applicant therefore respectfully requests that the rejection of claims 1 and 3 be withdrawn.

As to claim 2, the Applicant refers the Examiner to the arguments presented above with regard to claim 1, and submits that claim 2 is allowable at least based on its dependency to claim 1.

With regard to claim 4, the Applicant refers the Examiner to the arguments presented above with regard to claim 1, and submits that claim 4 is allowable at least based on its dependency to claim 1.

With regard to claims 5-6, the Examiner rejected claims 5-6 for reasons similar to those stated for claims 1-4. Therefore, the Applicant similarly believes that claims 5-6 are allowable for at least the reasons presented above with regard to claims 1-4, in view of the dependency of claims 5-6 on claim 1.

**VI. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Scott H. Davison/

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SUGHRUE MION, PLLC  
Telephone: (619) 238-3545  
Facsimile: (619) 238-4931

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Scott H. Davison  
Registration No. 52,800

WASHINGTON OFFICE  
**23373**  
CUSTOMER NUMBER

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